



## ASUC Judicial Council

### Summary Judgment

#### *Jackson v. Landgraf*

On this date, the Fourteenth of May, Two Thousand and Thirteen

By Senior Associate Justice Scott Lara with whom  
Assistant Chair Stephanie Chamberlain,  
and Associate Justices Nicolette Roger, Vishaal Pegany, and Alexandra Clarke join

In the case of *Jackson v. Landgraf*, the Judicial Council is asked to consider the constitutionality of Executive Order #2 issued by ASUC President Connor Landgraf on March 24, 2013. Executive Order #2 placed the Wellness and Recreation Fee Referendum on the Spring Regular Election 2013 Ballot in effect overriding the missed deadline to place the Referendum on this year's ballot.

We find that President Landgraf's Executive Order #2 is unconstitutional. We further hereby overturn and invalidate the Wellness and Recreation Fee Referendum that was placed on the Spring Regular Election 2013 Ballot.

### I. Procedural Concerns

The Defendant attempted to use an executive order to override the mandated amount of time for students to be allowed to consider a fee referendum.<sup>1</sup> The deadline to file a referendum was March 15<sup>th</sup>, 2013. President Landgraf issued Executive Order #2 on March 24, 2013, which gave students 18 days to inform themselves on an initiative that increases student fees at regular

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<sup>1</sup> The Election Bylaw requires: "7.2 **Date of Voting** The vote on an initiative, referendum, or amendment shall take place at the next regular election following receipt of the petition or vote of the Senate (or Graduate Assembly, as provided herein), provided that the date of receipt or Senate (or Graduate Assembly) vote is before the end of the candidate filing period for that election; otherwise, the vote shall take place at the second regular election thereafter."

intervals through till 2046. We believe it goes against the spirit of the ASUC Constitution to allow the decision of one student place a fee referendum on the ballot when the Constitution and By-laws have explicitly set out deadlines that were missed. If we allow this practice to continue, we would obfuscate the need for any democratic process to place anything on the Spring Ballot for the ASUC. The troubling effects of Executive Orders to either place or remove propositions from the ballot must be avoided if at all possible.

## **II. Authority and Jurisdiction of Executive Orders**

The ASUC Constitution clearly enumerates the limits of the President's executive order. The President may only issue an executive order "[t]o direct by Executive Order the taking of actions which are urgent and necessary to maintain the functioning of the ASUC until the Senate can again meet."<sup>2</sup>

For an executive order to be a valid use of the President's authority the President must satisfy all of the elements required in the Constitution. If an executive order fails any one of the elements enumerated in the Constitution, then the executive order is considered to be invalid. If the order does not solve an urgent problem, or was not necessary, or the order did not affect the functioning of the ASUC, or the problem could be solved at the next Senate meeting, then it is not considered a constitutional executive order. We find that President Landgraf's Executive Order #2 did not 1) solve an urgent problem; 2) was not necessary; 3) was not required to maintain the function of the ASUC; and 4) could have been solved the next time the Senate met. Thus, we find that Executive Order #2 failed every element.

## **III. Executive Order #2 Did Not Solve an Urgent Problem**

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<sup>2</sup> Art. II Section 2(C).

Executive Order #2 did not identify a sufficiently urgent problem to valid President Landgraf's use of an executive order. Executive Order #2 identifies the problem that the RSF and Tang center are "significantly overcrowded ..." and this referendum will provide "climbing walls, teaching kitchens, counseling services, yoga spaces, meditation gardens and cardio and weight machines." The RSF's lack of these items, while an inconvenience, is not an urgent problem. An urgent problem is something akin to a disaster or crisis that must be decided immediately, and requires action. Or to draw on other parts of the Constitution would be the same as having an Executive Officer vacancy and the duties of that office must be performed immediately.<sup>3</sup> Here the new facilities will take many years to build and the problem solved by the executive order is merely one of comfort. Problems that only deal with the comfort of the student body, such as a larger area to work out or newer machines, cannot be an urgent problem that the Executive Order can be used to solve. All of these factors lead us to conclude that this Executive Order did not solve an urgent problem.

#### **IV. The Order was Not Necessary**

For an order to be necessary the Order must satisfy two components, first the problem must require a solution, and second the order itself must be the only way to solve this problem. Here the problem does not require a solution and the order was not the only way to solve the problem.

For a problem to require a solution it must be a problem that the ASUC simply cannot ignore and continue to act on behalf of the student body. The problem as discussed above is that the gym was oversubscribed and a new gym would include new additional facilities. Not only was this problem not urgent the problem does not even necessitate a solution at any point.

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<sup>3</sup> Art. II Section 1(B)(3).

For an executive order to be necessary it requires that the executive order be the only way to solve this issue. Here that is not the case. First, the President and the Attorney General simply could have met the appropriate deadline. While the UCOP did take some time to return final approved referendum language to President Landgraf, the President “received notification of final approval of the referenda on March 8<sup>th</sup> 2013.”<sup>4</sup> The deadline to place the referendum on the ballot was on March 15<sup>th</sup>. We will not opine on the political feasibility of getting a bill certified by the Attorney General, passed by the committee, and passed by the Senate before the 15<sup>th</sup>. All we will say is that it was physically possible for the President to pass the bill through certification, committee, and the Senate floor in seven days. If need be, the Senate can suspend the By-laws by a two-thirds vote and the President has the power to call a special meeting before March 15<sup>th</sup> to have this referendum placed on the ballot. Just because the President either chose not to, or it was not politically feasible to follow the proper channels, does not mean the executive order was the only way to place this referendum on the ballot. Simply put, the executive order must be necessary to solve a problem that was not created by lack of due diligence of the executive. Additionally, the executive order must be the only way to solve that problem, whereas here the problem could have been solved through the normal process.

Even assuming it was impossible for the executive order to place this bill on the ballot and assuming this problem was unavoidable it was still not necessary for this referendum to be placed on the 2013 ballot. This referendum has already been placed on the 2014 ballot. Since the gym does not require this money immediately to continue to function there is no necessity that this be placed on the ballot this year, just that it is more expedient solution place it on this year’s ballot rather than next year’s.

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<sup>4</sup> Def. Brief 3

Because there is no compelling reason why this ballot referendum was *necessary* to be placed on the 2013 ballot rather than the 2014 ballot, and because it was possible to place this referendum through the normal channels on the 2013 ballot we find that this executive order was not necessary.

## **V. Functioning of the ASUC**

The executive order must also be required to maintain the functioning of the ASUC until the next time the senate can meet. This executive order fails this requirement as well.

While the referendum would create new facilities to benefit students, it is certainly not a constitutional requirement that these facilities be expanded. If the student body decided to reject these fee increases, there is no evidence that the ASUC would stop functioning or would have failed its mission to promote the welfare of the student body. Since this initiative can be voted down, and the student government will continue to operate, this necessitates the finding that this is not a problem that would cease the functioning of the SUC. Therefore, it was neither urgent nor necessary to maintain the functioning of the ASUC for President Landgraf to place this referendum through Executive Order #2.

## **VI. Conclusion**

For the above reasons we find that President Landgraf's Executive Order #2 was not urgent and necessary to the functioning of the ASUC. We therefore declare Executive Order #2 unconstitutional and nullify the Wellness and Recreation Fee Referendum that passed on the Spring 2013 ballot.